UNITED STATES
v.
FRANK W. WHITENACK

IBLA 70-20 Decided December 9, 1970

Mining Claims: Discovery: Generally

To constitute a valid discovery upon a lode mining claim there must be exposed within the limits of the claim a lode or vein bearing mineral of such quality and in such quantity as to warrant a prudent man in the expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; it is not sufficient that there is exposed mineralization which merely gives rise to a hope or expectation that a valuable mineral deposit may be found upon further exploration.

Mining Claims: Contests -- Mining Claims: Determination of Validity -- Mining Claims: Discovery: Generally

The Government's mineral examiners are under no obligation either to rehabilitate discovery points or explore beyond current workings of a mining claimant in attempting to verify a claimed discovery. When a mining claimant charges the Government's examiners failed to examine a working which should have been examined, it is incumbent upon the claimant to show mineralization of significant value has been exposed at that point.

IBLA 70-20 : Colorado Contest No. 366

UNITED STATES : Lode mining claim declared
v. null and void in part
FRANK W. WHITENACK

: Affirmed

DECISION

Frank W. Whitenack appealed to the Secretary of the Interior from a decision dated December 13, 1968, whereby the Office of Appeals and Hearings, Bureau of Land Management, affirmed the decision of a hearing examiner declaring invalid a portion of the Donald I. lode mining claim situated in the NW1/4NE1/4 sec. 5, T. 4 S., R. 74 W., 6th P.M., Clear Creek County, Colorado. 1/

The Donald I. claim, according to the record, was located by appellant on August 30, 1945, for silver, gold, lead and zinc. The validity of the portion now in question was challenged by contest complaint filed in the Colorado land office on December 7, 1964, on charges that:

a. No mineral deposits such as are deemed valuable mineral deposits within the meaning of the mining laws have been discovered within said part.

b. The land within said part is nonmineral in character.

Following a hearing, at which appellant was represented by counsel, the hearing examiner concluded in a decision dated December 27, 1965, that the evidence sustained the allegations of

1/ The remainder of the claim was declared null and void ab initio in earlier departmental proceedings. See Frank W. Whitenack, A-29798 (November 18, 1963).

the complaint. Citing the standard of discovery set forth in Castle v. Womble, 19 L.D. 455 (1894), and Jefferson-Montana Copper Mines Co., 41 L.D. 320 (1912), the hearing examiner stated the mining laws do not require a showing of values sufficient to demonstrate a claim can be worked at a profit or that it is more probable than not that a profitable mining operation can be accomplished. Nevertheless, he said, "the nucleus of value which sustains a discovery must be such that with actual mining operations under proper management a profitable venture may reasonably be expected to result." The evidence presented by the Government, he found, was sufficient to constitute a prima facie case in support of the allegation of lack of discovery, requiring the contestee to show by a preponderance of the evidence that a valuable deposit of minerals had been discovered within the limits of the claim. Appellant's evidence, the hearing examiner found, did not meet that burden but was sufficient, at most, to warrant further exploration of the claim for more definite evidence of the probable scope and extent of any mineralization therein.

The hearing examiner also found that the Government established a prima facie case in support of its allegation that the land in the claim is nonmineral in character, which was unrebutted by probative evidence.

The Office of Appeals and Hearings concurred in the hearing examiner's determination that no discovery had been shown. In so doing, it rejected appellant's contentions that the Government had failed to make a prima facie case, that the hearing examiner had employed improper criteria of discovery and had disregarded established rules of evidence and procedure in the conduct of the hearing, and that the contest was improperly initiated in the absence of an application for patent. The Office of Appeals and Hearings found it unnecessary to rule on the question of whether the land in appellant's claim is mineral in character, because the issue was rendered moot by determining that there had been no discovery.

Appellant appealed to the Secretary on two grounds. He asserts (1) the Government's mineral examiners, according to their own admissions, did not locate the workings which appellant pointed out to them and were, therefore, in no position to testify as to the mineral in question, and (2) the Bureau of Land Management saw fit to give the Colorado Bureau

of Public Roads a lease on the ground in question, including a portion of the deeded Plebian lode claim which appellant has owned and paid taxes on for 25 years.

Insofar as appellant has accused the Bureau of wrongfully leasing his privately-owned land to the State of Colorado, he has alleged matters completely outside the record, beyond the scope of this review, and wholly unrelated to the questions which are properly before us. Irrespective of the merits of appellant's charge, it is incumbent upon him to demonstrate the discovery of a valuable mineral deposit on the Donald I. mining claim in order to establish its validity.

Appellant's first assignment of error is essentially a reiteration of his earlier contention that the Government failed to establish a prima facie case in support of its allegation of lack of discovery. Assuming the Government's mineral examiners did not examine the particular workings of which appellant now speaks, of what significance is such fact? 2/

It is the duty of a mining claimant to keep discovery points available for inspection by Government mineral examiners, and they have no duty to rehabilitate discovery points or to explore beyond the current workings of the mining claimant. United States v. Bryan Gould, A-30990 (May 7, 1969), and cases cited. If the Government's examiners did not examine appellant's original discovery point, or any other point which appellant thought they should have examined, it was incumbent on appellant, in addition to establishing such fact, to show by competent evidence that minerals of significant value were exposed at that point. Such evidence was not presented.

2/ At the hearing two mining engineers employed by the Bureau of Land Management identified on a map a point from which they took a mineral sample, which point they believed to be the original discovery point described by appellant. On the same map, appellant marked a point some distance north of the first point as the approximate locus of his original discovery. The Government's witnesses acknowledged that, if appellant correctly identified his original discovery point on the map they did not take any mineral samples there.

As the decisions below explained, the discovery of a valuable mineral deposit in a lode mining claim can be established only by showing the physical exposure, within the limits of the claim, of a lode or vein bearing mineral of such quality and quantity as to warrant a man of ordinary prudence in the expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. Castle v. Womble, supra; Jefferson-Montana Copper Mines Co., supra. A distinct difference exists between evidence of mineralization which will induce men to engage in further prospecting or exploration in search of valuable mineral deposits and that which will induce them to expend their means in attempting to develop a valuable mine. Only the latter constitutes a valid discovery. United States v. Ford M. Converse, 72 I.D. 141 (1965); aff'd in Converse v. Udall, 399 F. 2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969); United States v. Henault Mining Company, 73 I.D. 184 (1966); aff'd in Henault Mining Company v. Tysk, 419 F. 2d 766 (9th Cir. 1969), cert. denied, 398 U.S. 950 (1970).

Appellant has not suggested that the evidence in this case meets the requirements of the foregoing test. The record before us fully supports the findings and decisions below. The proceedings in this case were conducted in accordance with established rules of procedure and, under the criteria herein set forth, no discovery of a valuable mineral deposit within the limits of the Donald I. mining claim was demonstrated. Accordingly, the claim was properly declared invalid.

We also agree with the Office of Appeals and Hearings that the determination that no discovery has been shown renders it unnecessary to pass upon the question of the mineral character of the land.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

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Francis Mayhue, Member

I concur:

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Edward W. Stuebing, Member

I concur:

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Martin Ritvo, Member